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INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of January 1, 1971

between

WESTERN MARYLAND COMPANY

and

WESTERN MARYLAND RAILWAY COMPANY

Covering

45 50-ton Box Cars

235 55-ton Hopper Cars

147 70-ton Gondola Cars

THIS AGREEMENT, dated as of January 1, 1971, by and between WESTERN MARYLAND COMPANY, a Maryland corporation, (Manufacturer), and WESTERN MARYLAND RAILWAY COMPANY, a Maryland and Pennsylvania corporation (Western Maryland);

W I T N E S S E T H:

Manufacturer and Western Maryland heretofore entered into Letter Agreements (copies of which Letter Agreements are made a part hereof by reference) whereunder Manufacturer agreed to construct or cause to be constructed and to deliver to Western Maryland, at Elkins, W. Va., and Western Maryland agreed to accept and pay for the following railroad equipment (Cars):

45 50-ton Box Cars, to bear Western Maryland's
Road Numbers 25111-25155, inclusive

235 55-ton Hopper Cars, to bear Western Maryland's
Road Numbers 21319-21553, inclusive

147 70-ton Gondola Cars, to bear Western Maryland's
Road Numbers 55704-55850, inclusive

Delivery of the Cars by the Manufacturer to Western Maryland is scheduled to begin on or after the date hereof. However, as Western Maryland has not as yet consummated financing arrangements (pursuant to a Conditional Sale Agreement or otherwise), it is not in position to accept delivery of and pay for the Cars under the terms of the Letter Agreements at this time. Western Maryland represents that such financing arrangements will be consummated, however, on or before March 15, 1971. Western Maryland (in order that it may use the Cars pending completion of the above financing arrangements) has arranged with Manufacturer to give it temporary custody and possession of the Cars on their completion, solely as a bailee of

the Cars, and Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, Manufacturer hereby delivers to Western Maryland and Western Maryland hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to Western Maryland at Elkins, W. Va., for the period ending on the earlier of March 15, 1971, or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cars shall remain in Manufacturer and Western Maryland's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. Western Maryland, without expense to Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, Western Maryland will do such other acts as may be required by law, or reasonably requested by Manufacturer, for the protection of Manufacturer's title to and interest in the Cars.

Western Maryland agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Cars of Manufacturer because

of its ownership or because of the use, operation, management or handling of the Cars by Western Maryland during the term of this Agreement.

Western Maryland's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

Western Maryland will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to Western Maryland under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Car, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY
AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT,
SECTION 20c.

Western Maryland hereby agrees to indemnify Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Car, Western Maryland shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of Manufac-

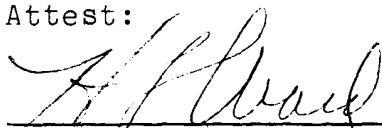
turer, including the right to receive the purchase price of the Cars as provided in the Letter Agreements, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall subject any such assignee to any of Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the Letter Agreements relating to the Cars. In the event Manufacturer assigns its rights to receive the payments herein and/or under the Letter Agreements, and Western Maryland receives written notice thereof from Manufacturer together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by Western Maryland under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to Western Maryland.

In the event of any assignment by Manufacturer of its rights to receive any payments under this Agreement or under the Letter Agreements, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Manufacturer in respect to the Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Western Maryland by Manufacturer. Any and all of such obligations howsoever arising, shall be and remain enforce-

able by Western Maryland, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

Western Maryland agrees with Manufacturer that the execution by Manufacturer of this Agreement or the delivery by Manufacturer to Western Maryland of the Cars, as contemplated by this Agreement, shall not relieve Western Maryland of its obligations to accept, take and pay for the Cars in accordance with the terms of the Letter Agreements, or impair any of the Manufacturer's rights under the Letter Agreements.

Attest:


Secretary

WESTERN MARYLAND COMPANY

By



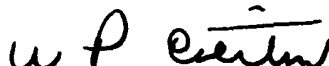
Norman C. Melvin
Vice President

Attest:


Secretary

WESTERN MARYLAND RAILWAY COMPANY

By



W. P. Coliton
President

STATE OF MARYLAND,
CITY OF BALTIMORE, ss:

On this 12th day of January, 1971, before me personally appeared Norman C. Melvin, to me personally known, who, being by me duly sworn says that he is a Vice President of Western Maryland Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

John P. Kempter
Notary Public
My commission expires July 1, 1974

STATE OF MARYLAND,
CITY OF BALTIMORE.

ss:

On this 12th day of January, 1971, before me personally appeared W. P. Coliton, to me personally known, who, being by me duly sworn, says that he is the President of Western Maryland Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

John P. Hignelton
Notary Public
My commission expires July 1, 1974